

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6987 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MU HAFEJI

Versus

ACCOUNTS OFFICER

Appearance:

MR IS SUPEHIA for Petitioner

SERVED for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/11/96

ORAL JUDGEMENT

Rule returnable today. Learned advocate Mr. Munshaw waives service of the Rule on behalf of the respondents.

Heard the learned advocates. The petitioner, who is serving as a Junior Accounts Clerk, has been placed

under suspension by order dated 13th March, 1995. Since the order of suspension, the petitioner has been served with the charge sheet on 17th April, 1996. The petitioner by filing this petition has claimed that, in view of the Government Resolution dated 15th July, 1993 and the petitioner having remained under suspension for more than a year, the order of suspension requires to be reviewed by the competent authority, and that the petitioner should be paid subsistence allowance equivalent to 75% of his salary since the expiry of six months from the date of suspension.

The learned advocate, Mr. Supehia does not press prayer (A).

The learned advocate, Mr. Munshaw has submitted that as the criminal prosecution is pending against the petitioner and the charge sheet has already been filed, in view of paragraph 4 of the above referred Government Resolution dated 15th July, 1993, the question of review of the order of suspension would not arise. He has also submitted that the petitioner has been delaying the inquiry, though the charge sheet in the disciplinary action has been issued as far back as on the 17th April, 1996. The petitioner has not yet filed his reply to the said charge sheet. Thus, the delay having been caused at the end of the petitioner, the subsistence allowance cannot be raised to that of 75% of the salary as is claimed by him. Be it noted that, though the order of suspension was issued on 13th March, 1995, the charge sheet was not issued until the expiry of more than one year. Thus, it cannot be said that the petitioner is alone responsible for the delay. In the circumstances, it is directed that the petitioner shall submit his reply to the charge sheet, if any, on or before 30th November, 1996. It is also directed that the petitioner shall co-operate in the disciplinary action instituted against him. Respondent No.2, after the petitioner files his reply as aforesaid, shall make an order of raising the subsistence allowance payable to the petitioner to 75% of his salary.

The learned advocate, Mr. Supehia, has also submitted that, though the petitioner preferred an appeal against the order of suspension on 25th April, 1995, respondent No.2 has not yet decided the same. It is, therefore, directed that respondent No.2 shall decide that appeal preferred by the petitioner, pending before him, on or before 7th December, 1996. Petition is allowed to the aforesaid extent. Rule is, accordingly, made absolute. There shall be no order as to costs.

(MS. R.M. DOSHIT, J.)